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Delhi High Court

HON'BLE JUDGE(S): PRADEEP NANDRAJOG, PRATIBHA RANI , JJ

RUPALI GUPTA v. RAJAT GUPTA

MAT.APP.(F.C.) - 143 of 2014, decided on 05/09/2016

Hindu Marriage Act (25 of 1955) , S.24— Interim maintenance - To wife - Rejection - Wife is qualified Chartered Accountant, having sufficient means to maintain herself - When wife practicing since 13 year, need not be granted interim maintenance - Rejection, proper.

(Para 14)

Case Referred :

Chronological Paras

AIR 2003 MAD 212

2000 (3) MPLJ 100

AIR 2000 SC 1398 : 2000 AIR SCW 1147

(2002) 2 M.L.J. 760

Name of Advocates

Ankur Mahindro for Petitioner; Anirudh K. Mudgal for Respondent.

1.MS. PRATIBHA RANI, J. :- The appellant/wife is aggrieved by the order dated September 06, 2014 whereby learned Judge Family Court awarded a sum of ?22,900/- per month towards maintenance to the two children of the parties but declined to award interim maintenance to her as she is a qualified Chartered Accountant having sufficient means to maintain herself.

2. It is admitted case of the parties that they got married on July 16, 2005 at Delhi in accordance with Hindu Rites and Ceremonies. They are having two children. Elder one is a son born on March 04, 2006 and younger one is a daughter born on March 12, 2008. They were living together till August 23, 2013. The appellant/wife is a qualified Chartered Accountant whereas the respondent/husband is an Electrical Engineer but running his own business. There are rival claims about the financial status and respective earnings of the parties.

3. The respondent/husband filed a petition for dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act.

4. In the divorce petition, the wife filed an application under Section 24 of the Hindu Marriage Act seeking interim maintenance for a sum of `3,00,000/- per month for herself and the two children and `1,10,000/- towards litigation expenses.

5. The impugned order has been challenged by the appellant/wife mainly on the ground that her income prior to separation has been wrongly taken into account and the view taken about her monthly income to be not less than `40,000/- in contrast to her claim of earning `7000/- per month is erroneous and liable to be set aside. Another ground of challenge is that income of her husband which is not less than `8,00,000/- per month has wrongly been assessed as `1,10,000/- per month.

6. When the appeal was reserved for judgement, a written note has been filed by the appellant/wife auditing the income of the respondent/husband and enclosing the receipt of the payment of tuition fees and transport charges in respect of the two children. She has also mentioned her reasonable wants from her husband which includes house rent, household expenses, miscellaneous expenses as well tuition fees and transport charges but without disclosing her own assets and income truthfully.

7. Section 24 of the Hindu Marriage Act makes a provision for award of interim maintenance to a spouse who has no independent income sufficient to support her and fight the legal battle. In the decision reported as AIR 2003 Mad 212 Manokaran @ Ramamoorthy Vs. M.Devaki High Court of Madras while construing the

provision of Section 24 of the Hindu Marriage Act and relying on its earlier decision reported as (2002) 2 M.L.J. 760 Kumaresan Vs.Aswathi held that for grant of maintenance pendent lite, the party should not have sufficient independent income for her/his support.

8. While denying maintenance to the appellant/wife, learned Judge Family Court refused to believe her claim that she was getting only `7,000/- per month despite the fact that she had been practicing as Chartered Accountant since the year 2003 earlier with M/s S.N.Verma and Company, after her marriage with her father-in-law who himself is a Chartered Accountant and then again with M/s S.N.Verma and Company. Her claim that she has no sufficient means to support herself and children had been dealt with by the learned Judge Family Court noting that the parties had been indulging in jugglery of accounts making the things complex.

9. The relevant discussion in para No.33 of the impugned order records the reason for not accepting the claim of the appellant/wife to seek maintenance from her husband and extracted hereunder:-

"33. The Applicant herself and her father in law as well as her former employer and now present employer M/s S.N.Verma and Co. all are Chartered Accountants. They are all competent professionals in maintaining accounts, filing income-tax returns of individuals as well as corporates. The income-tax returns filed by the Applicant herself reveal that she had advanced a loan of `11,99,026/- to Smt.Raj Gupta (her mother-in-law). The Petitioner/husband had, also, advanced loan of `12 lacs to `13 lacs to his parents. The Petitioner/husband had taken a loan of `6/7 lacs from his mama (maternal uncle). The Petitioner/husband claims to have taken a loan of `25 lacs jointly with his mother. It may not be entirely out of context herein to note thst Shri Nishant Jain, brother of the Applicant/wife is also facing divorce and maintenance petition filed against him by his wife Ms.Shefali Jain. In the said petition Shri Nishant Jain (brother of the Applicant) has claimed through his affidavit of income, assets and liabilities that he is not working since the year 2008 and had got married on 11.12.2010 (while being unemployed). He purchased a car make Toyota Altis in the year 2010. He purchased LED TV make Sony and music system make Sony in the year 2010. His father gifted him a laptop make Dell in the year 2011. He has taken insurance policies and paying annual premium of ?24750/-. His father advanced him a loan of `6,42,000/- on 16.09.2013. What is interesting to note that he is unemployed, does not work at all and claims to be maintained by his parents like his sister (Applicant herein). It is beyond comprehension as to why his father gifted him a laptop in the year 2011 when he is not working and obviously is a burden on his family. In such circumstances, it would have been extremely difficult for the father of the Applicant/wife to support her. It appears that the parties as well as their family members have been indulging in jugglery of accounts, making the things complex. May be an enquiry by the income- tax department or some other agency in all the transactions conducted by the parties and their family members, since their marriage i.e. 2005 could reveal the truth. However, the same would result in delay of the disposal of the petition and cause hardship to the children of the parties. I, therefore, do not consider it expedient to get such an enquiry conducted at this stage."

10. Admittedly the appellant/wife is a qualified Chartered Accountant and working in that capacity since the year 2003. When the appellant/wife is a qualified Chartered Accountant and practicing since the year 2003, after putting in 13 years in profession she cannot be expected to earn only `7,000/- per month which is below the minimum wages payable to an unskilled worker.

11. In context of award of interim maintenance under Section 24 of the Hindu Marriage Act to a well qualified spouse having the earning capacity but desirous of remaining idle has been deprecated in the decision reported as 2000 (3) MPLJ 100 Smt.Mamta Jaiswal Vs. Rajesh Jaiswal observing as under:-

"6. In view of this, the question arises as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendente life alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself in spite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente life alimony. The law

does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service? It really puts a big question which is to be answered by Mamta Jaiswal with sufficient congent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, can not be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice- versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That can not he treated to he aim, goal of Section 24. It is indirectly against healthyness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts arc unable to support and maintain themselves and arc required to fight out the litigation jeopardising their hard earned income by toiling working hours."

12. Both the children of the parties have been awarded interim maintenance for a sum of `22,900/- on the projection by the appellant/wife that she has been incurring a sum of `32,000/- per month for their maintenance including their tuition and other expenses.

13. The Supreme Court in the case reported as (2000) 4 SCC 266 : (AIR 2000 SC 1398) Padmja Sharma Vs. Ratan Lal Sharma has dealt with the issue of maintenance and obligation of the mother having the earning capacity to maintain the children. The relevant discussion appears in para No.10 which is extracted hereunder:-

"10. Maintenance has not been defined in the Act or between the parents whose duty it is to maintain the children. Hindu Marriage Act, 1955, Hindu Minority and Guardanship Act, 1956, Hindu Adoptions and Maintenance Act, 1956 and Hindu Succession Act, 1956 constitute a law in a coded form for the Hindus. Unless there is anything repugnant to the context definition of a particular word could be lifted from any of the four Acts constituting the law to interpret a certain provision. All these Acts are to be read in conjunction with one another and interpreted accordingly. We can, therefore go to Hindu Adoptions and Maintenance Act, 1956 (for short the 'Maintenance Act') to understand the meaning of the 'maintenance'. In Clause (b) of Section 3 of this Act "maintenance includes (i) in all cases, provisions for food, clothing residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage." and under Clause (c) "minor means a person who has not completed his or her age of eighteen years," Under Section 18 of Maintenance Act a Hindu wife shall be entitled to be maintained by her husband during her life time. This is of course subject to certain conditions with which we are not concerned. Section 20 provides for maintenance of children and aged parents. Under this Section a Hindu is bound, during his or her life time, to maintain his or her children. A minor child so long as he is minor can claim maintenance from his or her father or mother. Section 20 is, therefore, to be contrasted with Section 18. Under this Section it is as much the obligation of the father to maintain a minor child as that of the mother. It is not the law that how affluent mother may be it is the obligation only of the father to maintain the minor."

14. So far as refusal to award interim maintenance to the appellant/wife is concerned, we concurred with the finding of learned Judge Family Court. The appellant/wife who is a qualified Chartered Accountant and in profession since the year 2003 need not be granted interim maintenance under Section 24 of the Hindu Marriage Act.

15. The respondent/husband while appearing before the Court acknowledges his responsibility to support his children and did not question the maintenance awarded to them. He assures the Court that he will ensure good education for his children and bear the additional burden in terms of increase in school fees, transport allowance etc. as and when necessity arises and brought to his notice. He has only objected to award of maintenance to his wife who is a Chartered Accountant and to this extent we have also not granted any relief to her.

16. Since the learned Judge Family Court has taken a balanced view in the matter we do not find any ground to interfere with the same.

17. Appeal is dismissed.

18. No costs.

Appeal Dismissed